IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1754 OF 2005

Shri Shamrao Bhau Nirmal : Petitioner

(Orig.Pltff.No.2)

V/s.

Shri Sadashiv Maruti Nirmal & Ors. : Respondents

...

Mr.T.S.Ingale for the petitioner.

None present for the respondents.

...

CORAM : S.A. BOBDE, J.

August 3, 2005.

P.C.:

1. This petition is directed against the order of the First Ad-hoc Additional District Judge, Kolhapur, dated 15.9.2004 dismissing the petitioner's appeal. While doing so, the learned appellate Court has upheld the order of the trial Court refusing injunction against the petitioner.

2. The plaintiffs had sued for a partition. They sought a temporary injunction restraining the respondents from disturbing their possession in respect of the suit flats. Both the Courts below, after referring to the evidence

produced by the parties, have come to the conclusion that the defendants prima facie are in possession of the suit flat and the plaintiffs are not entitled for injunction.

3. In particular, it is clear from the order of the appellate Court that there is a certificate issued in the name of the predecessor-in-title of the defendants under section 32G of the Bombay Tenancy and Agricultural Lands Act. The petitioner failed to establish that this certificate was primarily issued while proceedings under the Act were pending. The appellate Court has also referred to the fact that pencil entries of the name of the petitioner in the 7/12 extracts were removed and merely an appeal against the order of such removal is said to be pending. The appellate Court has also rejected the petitioner's contention based on the order in M.C.A. No.170/98, since the judgement in that case did not concern joint possession of the plaintiffs and the defendants. In this view of the matter, the is no reason to interfere.

4. The petition is, therefore, liable to be dismissed and is, accordingly, dismissed. The trial Court shall, however, decide the suit as expeditiously as possible.

S.A. BOBDE, J.